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DEC 11 2006

OFFICE OF PETITIONS

In re Application of :
Kuo et al. : DECISION ON PETITION
Application No. 10/790,508 :
Filed: March 1, 2004 :
Attorney Docket No. 1970-10 :

This is in response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT and the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed November 1, 2006 (and resubmitted November 15, 2006).

The petition to withdraw holding of abandonment under 37 CFR § 1.181 is **DISMISSED**.

The petition under 37 CFR § 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely file a reply to the non-final Office action mailed July 25, 2005. This Office action set a three-month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a). No reply having been received in the Office and no extension of time obtained, the above-identified application became abandoned on October 26, 2005. A Notice of Abandonment was mailed on September 15, 2006.

In response, petitioner filed the instant petition, asserting that the Office action was not received. In the alternative, petitioner maintained that the failure to respond to the Office action was unintentional.

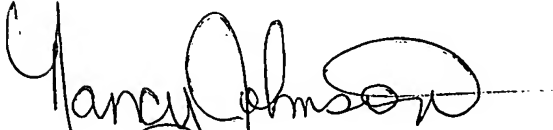
There is a strong presumption that the correspondence was properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, petitioner must submit evidence to overcome this presumption. A review of the record reveals no irregularities in the mailing of the Office action. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. In addition, a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petitioner's arguments and evidence have been considered, and it is concluded that petitioner has not made an adequate showing of non-receipt. The attorney for applicant attests that a search of the file and docketing records indicates that the Office action was not received. In support of this statement, petitioner has submitted docket records. However, a review of the docket records reveals that they do not show where the Office action would have been docketed had it been received. The Office action was mailed July 25, 2005 with a three-month shortened statutory period for reply. However, applicants submitted records for August 27, 2006, September 24, 2006, September 25, 2006, October 23, 2006, and October 29, 2006, all dates more than a year after the mailing of the Office action and outside of the maximum extendable period for reply. In view thereof, the petition to withdraw the holding of abandonment based on non-receipt must be dismissed.

Nonetheless, the petition to revive the application is grantable. The petition includes the required reply, the required statement of unintentional delay and payment of the petition fee set forth in 37 CFR § 1.17(m). No terminal disclaimer is required.

Technology Center AU 3762 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the reply submitted on petition filed November 1, 2006.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is stylized with a large, looped "N" and a cursive "Johnson".

Nancy Johnson
Senior Petitions Attorney
Office of Petitions